

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

AUG 18 2016

Clerk, U S District Court
District Of Montana
Billings

KURT HAEKER,

Plaintiff,

vs.

MIKE LINDER, Yellowstone County
Sheriff,

Defendant.

CV 16-26-BLG-SPW-CSO

ORDER

Before the Court are United States Magistrate Judge Carolyn Ostby's Findings and Recommendations that were filed on July 22, 2016. In the Findings and Recommendations, Judge Ostby recommends that this Court grant Defendant Mike Linder's motion to dismiss. Judge Ostby concludes that Count 2 and the due process claim in Count 1 should be dismissed with prejudice, and the equal protection claim in Count 1 should be dismissed with leave to amend.

Pursuant to 28 U.S.C. § 636(b)(1), the parties were required to file written objections within 14 days of the filing of Judge Ostby's Findings and Recommendations. No objections were filed. When neither party objects, this Court reviews Judge Ostby's conclusions for clear error. Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). After

reviewing the Findings and Recommendations, this Court does not find that Judge Ostby committed clear error.

Accordingly, IT IS HEREBY ORDERED:

1. Judge Ostby's Findings and Recommendations (Doc. 15) are ADOPTED IN FULL.

2. Linder's Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) for Failure to State a Claim (Doc. 11) is GRANTED as follows:


a. Count 1 is DISMISSED with prejudice as to the claim under the Fourteenth Amendment's Due Process Clause.

b. Count 2 is DISMISSED with prejudice.

c. Count 3 is DISMISSED with leave to amend as to the claim under the Fourteenth Amendment's Equal Protection Clause.

3. If Haeker wishes to proceed on his equal protection claim, he must file an amended complaint by **September 7, 2016**. If an amended complaint is not filed, the Court will direct the Clerk of Court to enter judgment and close the case.

DATED this 17th day of August, 2016.


SUSAN P. WATTERS
United States District Judge